AN ACT concerning labor and employment; relating to occupational licensing and regulation; enacting the right to earn a living act.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) Sections 1 through 4, and amendments thereto, shall be known and may be cited as the right to earn a living act.
(b) The legislature finds that:
(1) The right of individuals to pursue a chosen profession, free from arbitrary or excessive government interference, is a fundamental civil right.
(2) The freedom to earn an honest living traditionally has provided the surest means for economic mobility.
(3) In recent years, many regulations of entry into professions have exceeded legitimate public purposes and have had the effect of arbitrarily limiting entry and reducing competition.
(4) The burden of excessive regulation is borne most heavily by individuals outside the economic mainstream, for whom opportunities for economic advancement are curtailed.
(5) It is in the public interest to:
(A) Ensure the right of all individuals to pursue legitimate entrepreneurial and professional opportunities to the limits of their talent and ambition;
(B) provide the means for the vindication of this right; and
(C) ensure that regulations of entry into professions are demonstrably necessary and carefully tailored to legitimate health, safety and welfare objectives.
(c) For the purposes of this act:
(1) "Agency" means any department, bureau, division, board, authority, agency, commission or institution of this state, any political subdivision of the state and any city, county or unified government that is authorized by law to administer, adopt or enforce any occupational regulation or occupational license. "Agency" does not include the judicial and legislative branches of government.
(2) "Occupational license" means a nontransferable and exclusive authorization in law in which the legislature establishes the personal qualifications necessary to engage in any occupation or profession.
"Occupational regulation" means any regulation, rule, policy, fee, condition, test, permit, administrative practice or other provision in which an agency establishes the personal qualifications necessary to engage in any occupation or profession. An "occupational regulation" does not include an "occupational license."

"Less restrictive regulation" means, from least to most restrictive:
(A) Market competition;
(B) third-party or consumer-created ratings and reviews;
(C) private certification;
(D) voluntary bonding or insurance;
(E) specific private civil cause of action to remedy consumer harm;
(F) deceptive trade practice act;
(G) mandatory disclosure of attributes of the specific good or service;
(H) regulation of the process of providing the specific good or service;
(I) inspection;
(J) bonding;
(K) insurance;
(L) government registration;
(M) government certification;
(N) specialty occupational license for medical reimbursement; and
(O) occupational license.

"Personal qualifications" means criteria related to an individual's personal background and characteristics including completion of an approved educational program, satisfactory performance on an examination, work experience, other evidence of attainment of requisite skills or knowledge, moral character, criminal history and completion of continuing education.

"Specialty occupational license for medicaid reimbursement" means a non-transferable authorization in law for an individual to qualify for payment or reimbursement from a governmental agency for the non-exclusive provision of medical services based on meeting personal qualifications established by the legislature. A private health insurance company or other private company may recognize this credential for the purpose of reimbursing medical costs.

"Welfare" means the protection of members of the public against fraud or harm and shall be narrowly construed. "Welfare" does not include the protection of existing businesses or agencies, whether publicly or privately owned, against competition.

"Subsidy" means taxes, grants, user fees or any other funds received by or on behalf of an agency.

Sec. 2. (a) All occupational regulations shall be limited to those demonstrably necessary and carefully tailored to fulfill legitimate public
(b) Within one year following July 1, 2020, every agency shall complete a comprehensive review of all occupational regulations and occupational licenses within their jurisdictions, and for each it shall:

(1) Articulate with specificity the public health, safety or welfare objectives served by the regulation;
(2) articulate the reasons why the regulation is necessary to serve the specified objectives;
(3) analyze, where information is readily available, the effects of regulation on opportunities for workers, consumer choices and costs, general unemployment, market competition, governmental costs and other effects; and
(4) compare the regulation to whether and how other states regulate the business or profession.

(c) To the extent the agency finds any regulation that the agency determines does not satisfy the standard set forth in subsection (a), it shall:

(1) Repeal the occupational regulation or modify the occupational regulation to conform with the standard set forth by subsection (a) if such action is within the agency's authority; or
(2) recommend to the legislature actions necessary to repeal or modify the occupational license or occupational regulation to conform to the standard of subsection (a) if such action as it relates to an occupational regulation is not within the agency's authority.

(d) Within 15 months following July 1, 2020, each agency shall report to the legislature on all actions taken to conform with this section. The report shall be provided to the senate committee on commerce and the house committee on commerce, labor and economic development on or before February 1, 2021, and each February 1 thereafter.

Sec. 3. (a) Any person may petition any agency to repeal or modify any occupational regulation within its jurisdiction.

(b) Within 90 days of the filing of such petition, the agency shall:

(1) Repeal the occupational regulation;
(2) modify the regulation to achieve the standard set forth in section 2, and amendments thereto; or
(3) state in writing provided to the petitioner the basis of the agency's conclusion that the regulation conforms with the standard set forth in section 2, and amendments thereto.

(c) Filing a petition shall not be a requirement or prohibition for any person to file an action in a court of general jurisdiction to challenge an occupational regulation.

(d) The plaintiff shall prevail if the court finds by a preponderance of the evidence that the challenged occupational regulation, on its face or in its effect, burdens the entry into a profession or occupation; and
(1) that the agency has failed to prove by a preponderance of evidence that the challenged occupational regulation is not demonstrably necessary and carefully tailored to fulfill legitimate public health, safety or welfare objectives; or

(2) that the legitimate public health, safety or welfare objectives can be effectively served by using a less restrictive regulation that is less burdensome to economic opportunity.

(e) Upon a finding for the plaintiff, the court shall enjoin further enforcement of the challenged occupational regulation and shall award reasonable attorney fees and costs to the plaintiff.

Sec. 4. If any provision or clause of this act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.